

ages of Andrews
4th August 1760.

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26 Nov
1760

Unto the Right Honourable the Lords of Council and Session.

THE
PETITION

OF THE

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Principal and Masters of the United
Colleges of *St. Salvator* and *St.
Leonard*, in the University of *St. An-
drews*,

Humbly sheweth,

THAT the Priory of *Portmoak* was annexed to the Col-
lege of *St. Leonard*, and made Part of the Patrimony of
the College, by a Grant of King *James VI.* in the Year 1580,
ratified in the next Session of Parliament, held in 1581; and
since that Time the Principal of *St. Leonard's* College has been
usually designed Prior of *Portmoak*.

In the Year 1617 the Parliament took the Restitution of
Chapters under their Consideration; and as the Prior and
Canons of the Priory of *St. Andrews* had formerly been Dean
and Chapter of this Archiepiscopal See; and the Priory was
then erected into a temporal Lordship, it was necessary to make

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a new Nomination of Persons who were to compose this Chapter. And by the second Act past in that Session of Parliament, this Nomination is made; and in particular, the Prior of *Portmoak*, who is Principal of *St. Leonard's* College, is declared to be Dean of the Chapter.

2d June
1663.

King *Charles II.* was pleased, in the Year 1663, to grant a Signature in Favour of the Dean of the Chapter of the Archbishoprick of *St. Andrews*, and his Successors, of the Parsonage of *Kinkell*, consisting of the several Parish Churches underwritten, viz. the Churches of *Kinkell*, *Drumblat*, *Kintore*, *Skeen*, *Kinnellar*, *Dyce*, and *Kemney*, Parsonage and Viccarage Tithes thereof, and haill Profits and Emoluments belonging thereto, lying within the Sherifffdom of *Aberdeen*, vacant in his Majesty's Hands, and at his Gift and Donation, as Patron of the foresaid Parsonage, by Decease of Mr. *James Gordon* last Parson of *Kinkell*: and his Majesty did thereby make and constitute the said Dean, and his Successors, undoubted Patrons of the haill Kirks above mentioned, with full Power and Commission to them, whensoever any of the said Kirks shall vake by Decease, Demission, Transplantation, Deprivation, or any other Way, to nominate and present Persons qualified for the Ministry, provided that the Nomination and Presentation of Parsons to any of the said Churches be with the expresse Consent of the Archbishop of *St. Andrews*, and his Successors, without which the Nomination or Presentation by the Dean or his Successors, shall not be valid, nor have any Effect to the Person presented; and his Majesty required the Bishop of the Diocese of *Aberdeen*, to grant Admission to such Persons as shall be presented by the said Dean, or his Successor, as shall be found qualified, and that in the ordinary Way, without Trouble or Delay; and his Majesty suppressed and dissolved the whole Kirks above specified, Parsonage and Viccarage, and Patronage of the same, from the Parsonage above written, and incorporated and annexed the same in and to the foresaid Deanry of *St.*



St. Andrews, perpetually, and in all Time coming, to be bruik-
ed and enjoyed by the Dean thereof, from Time to Time, as
is above exprest.

This Signature was ratified in the Parliament that was held
in the Year 1663; and though no Charter and Infestment was
expede upon it, yet it has been the constant Title of Posses-
sion of the Tithes of the several Parishes therein mentioned;
and under this Grant the Principals of the College of *St. Le-
onards* are always in Use to recover and uplift the Teinds from
the Possessors, and to grant Leases thereof, and to uplift the
Rents and Tack-duties payable for the same; as also to dispose
of the vacant Stipends, in the same Manner as other Patrons of
the Kingdom.

By the Abolition of Episcopacy in *Scotland*, in the Year
1689, the above Limitation, upon the Exercise of the Right
of Presentation, *viz.* that it should be with Consent of the
Archbishop, came to an End; but the Right of Patronage
still remained with the Principal of the College, and his Title
thereto has been oftener than once acknowledged in Parlia-
ment, though they have not regularly exercised it, as at some
Periods this was thought adversary to *Presbyterian* Principles.

By an Act past in the 20th Year of his present Majesty's
Reign, the two Colleges of *St. Salvator* and *St. Leonard* are
united, incorporated, and erected into one College, called the
United College of *St. Salvator* and *St. Leonard*, in the Univer-
sity of *St. Andrews*: And it is enacted, that all and sundry
the Lands, Tenements, Annualrents, Tithes, Revenues, He-
reditaments, and all Goods and Chattels, and also all Bursaries
and Patronages belonging to, or that may be known to belong
to the said two Colleges, or either of them, or to either of
the Principals or Masters in the said Colleges, shall belong to
the United College, and shall be under the Management of
the Principal and other Masters of the said United College in
all Time coming; and the yearly Produce of the whole Teinds
already

already appropriated, or to be appropriated for Payment of the Salaries of the Principal and Professors of the said United College, shall be joined in one common Stock, and be levied and received for their Use by such Factor as shall from Time to Time be appointed and authorised by the Principal and Professors, or major Part of them.

An express Proviso is also made by this Act, That the Principal of *St. Leonard* College should continue to enjoy the Right he has of granting Leases of the Tithes of the Parsonage of *Kinkel*, and to receive to his own Use the Fines, Grassums and Compositions, due therefor ; and shall enjoy the full Administration of the Parsonage as it was enjoyed by him and his Predecessors, until he attain his Salary, as therein mentioned; after which the Rents should belong to the united College.

The Principal has now attained his full Salary, and the Right of the Tithes and Patronages being devolved, in Terms of the late Act of Parliament, to the Principal and Masters of the United College without any Limitation, they were advised that it was proper for them to have their Title completed in a feudal Manner.

And some Doubts having occurred to the Barons of Exchequer, whether the Clause requiring the Consent of the Archbishop in exercising the Right of Presentation under this Patronage, might not carry a Reservation in favour of the Crown, the Matter has been laid before the Lords of Treasury, where the College has Reason to hope for a favourable Determination agreeable to the former Grants by the Crown in their favours.

But while this is in Dependence, certain Disputes have arisen betwixt the College and the Heretors of these Parishes concerning new Tacks or Leases of their Teinds ; some of which are now depending in this Court. And these Gentlemen have been very industrious to throw every Rub in the Way of the College in obtaining this Grant. And, it is believed,

lieved, it will not be denied that it was on their Suggestion that the Solicitor for the Crown appeared in one of these Processes, for the Interest of the Crown, in this Matter.

The Petitioners have been lately informed, that the Doer for some of these Gentlemen carried to the Country with him, and has lately executed at the several Parish Churches, Inhibitions of Teinds against the Heretors, raised at the Instance of his Majesty's Solicitor for the Tithes.

The Officers of the Crown are certainly in Duty bound to look after the Interest of the Crown with all proper Care; and how far the present Proceedings were proper, the Petitioners will not take upon them to judge. Inhibition of Teinds has been considered in our Law as on the same Footing with a Warning from Lands, to take off the Effect of tacit Relocation; and has been only brought at the Instance of a Proprietor, or others having a proper Title to enter to the Possession: And it is a settled Point in our Law, that the Crown cannot attain Possession by such Inhibition; but must have a Declarator of the Right before they can insist in any petitory Action for the Teinds; and no Step has been hitherto taken towards either of these in the present Case.

One Effect indeed such Inhibition may have, to give a Handle to the Heretors in these Parishes to refuse Payment of their Tack Teind-duties to the College, which, it is apprehended, is the Use intended to be made.

In this View the Petitioners beg Leave to apply to your Lordships, to have their legal Possession continued, which they have now enjoyed under the Royal Grants, and Acts of Parliament ratifying the same, for above one hundred Years without Interruption, reserving to the Crown to bring and insist in any proper Action for declaring its Right.

It belongs to the first Principles of Law and good Government, that lawful Possession should be continued, even where the Right is disputed, till the same receives a Determination,

nation, and any Colour of a Title is sufficient to maintain such a Possession. Where Possession has been continued for seven Years, this of itself affords Ground of Action to remove any contrary Possession; but where such has been continued for Centuries under such Authority as in the present Case, there can be no Doubt that it should be continued till a better Right is at least in the Field. And this more particularly holds as to the Possession of Benefices or Stipends. As to these, Lord *Stair* has laid it down, "That by seven Years peaceable Possession they have the Benefit of a possessory Judgment and cannot be called in Question but by Reduction or Declarator." And by an Act of Sederunt, "Possession of Benefices or ecclesiastical Rights, thirty Years after the Reformation, or ten Years before, is appointed to stand as a valid Right."

This whole Doctrine applies very strongly to the present Case, and the Petitioners hope it will not be received with the less Favour, that these Teind-duties are a considerable Part of the Patrimony of a College for the Education of Youth, which has always been considered as under the particular Protection of the Law and of the Crown. And it is believed the Solicitor for the Tythes will not oppose the present Demand; and surely the Heretors cannot be heard against it.

*to recall the inhibition of
Teind. &*

May it therefore please your Lordships, to continue the Possession of these Teind-duties, notwithstanding the Inhibition, reserving to the Officers of the Crown to prosecute the Crown Right in this Matter as they shall be advised.

According to Justice, &c.

JO. CRAIGIE.

Upon

Upon the second Day of *August* 1760 Years, betwixt the Hours of Eleven and Twelve Beforenoon, I *Alexander Duncan*, Clerk to *James Graham*, Writer to the Signer, Doer for the Petitioners, intimated to Mr. *James Montgomery*, his Majesty's Solicitor for Tythes, that Copies of this Petition were to be put into the Lords Boxes on *Monday*, in order to be moved before their Lordships on *Tuesday* next, and delivered him a Copy thereof, with a short Copy subjoined thereto, subscribed by me, intimating as above. This I did before and in Prefence of *Thomas Farquharson* and *David Murray*, both Writers in *Edinburgh*.

ALEX^r. DUNCAN.

Thomas Farquharson Witness.

David Murray Witness.

26 Nov^r 1760

James The Petition improper as it did not pray to recall the
the Crown may bring a Declarator with harassing the legs
with this severe diligence

Coalston the Inhibition improper as the College are in possession
this is not a method of trying a point of right. it ought
only to be raised to prevent tacit relocation not to try the
right. The Crown Lawyers cannot try a point of right
with the legs without a signed manual

The President of the same opinion

Atmore of a different opinion this only a step relating
to the possession a signed Manual not necessary.
nor in a multiple founding

Archibald the inhibition illegal. the Possession should
be continued until the point of rightth determined.

Justice Clerk

The Lords Recall the inhibition



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